IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 622 OF 2004

IN

CRIMINAL APPEAL NO. OF 2003

Anand Vaman Kulkarni .. Applicant

versus

Inventa Leiks Pvt.Ltd. & ors. .. Respondents

...

Mr.P.K. Dhakephalkar for the applicant.

Mr.S.A. Bhagwat for the respondent nos.1 and 2.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 16th September 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the respondents.

2. The applicant is challenging the order passed by the trial Court acquitting the respondent of the charge under section 138 of the Negotiable Instruments

Act. It is submitted by the learned counsel appearing on behalf of the applicant that the fact that dishonour of the cheque has not been disputed by the respondent. The trial Court has come to the conclusion that question of rebuttal of presumption on the part of the accused did not arise in the present case in view of the fact that the complainant had not established that there was an existing liability. He submitted that the said finding of the trial Court was erroneous. In view of the admitted position that the cheque was dishonoured and clause nos.7 and 9 of the minutes of the meeting which clearly stipulated that in the event the equipment was not delivered, an amount of Rs.7 lakhs will be paid. The trial Court however did not feel it necessary that the accused should rebutt the presumption which was imposed upon him by section 138 of the Negotiable Instruments Act.

3. The learned counsel appearing on behalf of the respondents has taken me through the cross examination of PW no.1 and has submitted that the original was not brought on record. It is the duty of the complainant to bring the original cheque on record. It is submitted that there was no reason to defer with the finding which are given by the trial Court. He has relied upon the judgement of the Apex Court in AIR

1987 S.C. 1983 in the case of Tota Singh & ors. Vs. State of Punjab and the judgement of this Court reported in 2003 Vol.105(4) Bom.L.R. 666. In my view, the ratio of these judgements will have to be taken into consideration at the final hearing of the appeal.

4. In my view, this is a fit case where leave should be granted.

5. Leave granted. Appeal admitted. Call for Record and Proceedings. Hearing of the appeal is expedited.

6. The learned counsel for the respondent waives service on behalf of the respondent nos.1 and 2.

7. All concerned to act on a copy of this order duly authenticated by the Court Sheristedar.

V.M.KANADE, J